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A LETTER

TO THE

RIGHT HONOURABLE THE LORD CHANCELLOR;

ON

THE PRESENT STATE OF THE

LAW OF LUNACY,

WITH

SUGGESTIONS FOR ITS AMENDMENT.

BY A BARRISTER OF THE INNER TEMPLE.

London :

WILLIAM CROFTS, 19, CHANCERY LANE.

1838.

ROYAL COLLEGE
OF
PHYSICIANS
OF
LONDON

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Temple, 3rd Nov. 1838.

“ Eheu
Quam temere in nosmet legem sancimus iniquam !”
HOR :

MY LORD,

Amongst the many duties connected with that distinguished office which your Lordship holds, there is not one more important in itself, or which possesses greater claims to your regard, than the care of those, who by imbecility of the mental faculties, are rendered incapable of governing themselves. It is a serious and a sacred charge, deputed to your Lordship by that gracious Sovereign, whose duty, and whose privilege it is, to be the protector of all the unprotected of her subjects, and who as such, is the primary guardian of the Idiot and the Lunatic.

On behalf of that too-numerous class, my Lord, of our fellow-subjects, more dependant upon your control, and more entitled to your consideration, than any other of the many applicants for justice at your Lordship's Courts, I now respectfully address you ;—begging your consideration of the Statutes which regulate their care and treatment, and, if it can be satisfactorily pointed out to your Lordship, that any substantial defect does really exist, upon the face of that law by which their persons, as well as their property, ought to be guarded,—then, I would earnestly entreat, that neither your Lordship's interest, exertions, or authority be withheld, in procuring its alteration and amendment.

It is not within the scope, either of my abilities or inclination, to make observations upon any general or individual abuses practised within the walls of asylums for the insane, or upon the efficacy or inefficacy of their mode of treatment; for although much has been written of late, in condemnation of the present system of public inspection, such subjects, will always be more ably treated of by those, who by their situations in life, are led more frequently than myself, to prosecute such enquiries. Neither would I presume, thus to place before your Lordship, a single comment upon the alleged ignorance, or attributed misconduct of particular medical practitioners, for such, whenever it may occur, will always be met to advantage, and checked by a well-merited exposure, on the part of some member or another, of that intelligent, and ever-watchful profession. My present object is simply this,—to draw your Lordship's attention to the fact, that by the law as it now stands, an idiot—a monomaniac—the mere lonely and quiet sufferer from morbid feeling and imagination, is placed in a worse condition, and a more perilous situation with regard to his personal liberty, than the criminal, who by his delinquencies has rendered himself liable to punishment. The *property* of an actual or supposed lunatic is infinitely better guarded than his person, indeed, property receives all the protection which can be bestowed; but, let the individual himself be never so inoffensive, and sane upon every subject but one, his personal liberty can at all times be placed in jeopardy by the written *order of a friend*, when backed by the warrant of two physicians, surgeons, or apothecaries.

This is indeed a startling anomaly in the jurisprudence of England. How little is it in accordance, with our notions of that freedom, which we pride ourselves upon how great is its opposition, to the very principles of that constitution, which we live under and are wont to admire;

nevertheless, the case as stated is correct, and can be supported, not only by the evidence of facts, but by reference to the several Acts of Parliament which have been passed on the subject.

‘It was the doctrine of our *ancient* law,’ says Blackstone ‘that persons deprived of their reason might be confined, until they recovered their senses, without waiting for the forms of a commission or other authority from the crown.’ Is the law less barbarous in practice at the present day than it was at the time, which the learned Commentator referred to?—a question very easy of solution by reference to the statute books, and by *their* authority it would appear, that such a question can only be answered in the negative.

The principal act of Parliament, which ‘regulates the care and treatment of insane persons in England’ is the 2 and 3 Wm. IV. cap. 107; this has since been partially amended by the 3rd and 4th Wm. IV. cap. 64; and was subsequently, continued in force until the end of the present session, by the 5th and 6th Wm. IV. cap. 22. There are also two other important statutes touching the same subject, (viz.) the 3rd and 4th Wm. IV. cap. 36, and the 9th Geo. IV. cap. 40, but as the first, chiefly relates to the issuing of Writs *de lunatico inquirendo* and the proceedings thereupon, and the second, being almost entirely confined to the erection and regulation of County Lunatic Asylums, they cannot be said, materially to interfere with the subject of this letter, and will not in consequence be further alluded to.

The Statute, against which, the unfortunate sufferer by mental illusion, has real ground for complaint is the 2nd and 3rd Wm. IV. cap. 107, because it sanctions by implication, his *immediate* arrest and imprisonment, and that upon no better verdict, than the opinion, of any two Physicians, Surgeons, or Apothecaries, when evidenced by their

certificate to that effect. Before the establishment of private mad-houses under the authority of Parliament, it was the practice of the Court of King's Bench to interfere by *habeas corpus*, for the purpose of discharging persons improperly confined therein, see *Rex v. Turlington*, 2 Burr: 1115. But where is there such an application of modern date? the mad-house is inviolate, except upon an occasional inspection by the Commissioners, and even then, the unhappy individual, is too much within the mercy and control of people, whose interest it is, to prolong his confinement until the latest period, for him to be enabled to make a successful complaint.

By the 27th section of that statute (2nd and 3rd Wm. IV. cap. 107,) it is enacted "That no person (not being a parish pauper) shall be received into any house licensed for the reception of insane persons, without an *order* under the hand of the person by whose direction such insane person is sent, which *order* shall be according to the form annexed, and in it shall be named the christian and surname, and place of abode, and the degree of relationship or other circumstance of connection between such person and the insane person, and the true name, age, place of residence, former occupation, and the asylum or other place if any, in which the insane person shall have been previously confined, and whether such person shall have been found lunatic or of unsound mind, under a commission issued for that purpose by the Lord Chancellor, &c.—nor shall any such person be received into any such house without a medical certificate, of two Physicians, Surgeons or Apothecaries in the manner directed by this act, and if any person shall knowingly or wilfully receive any insane person or persons represented or alleged to be insane, to be taken care of or confined in any house licensed under this act, without such order and medical certificate and without making within three calendar days after the reception of

such, a minute or entry in writing in a book to be kept for that purpose, &c. of the true name of the patient, and also the christian and surname, occupation and place of abode, of the person by whom such patient shall be brought, every person so offending shall be deemed guilty of misdemeanor;" the following section in like manner also prescribes "that every medical certificate upon which any order shall be given for the confinement of any person (not being a parish pauper) in a house licensed under this act, shall be according to the form annexed, and shall be signed by two medical practitioners not being in partnership, and each of them being a physician, surgeon or apothecary, who shall have separately visited and personally examined the patient to whom it relates, not more than seven clear days previous to such confinement, and such certificate shall be signed and dated on the day on which he or she shall have been so examined, and shall state that such person is insane, and proper to be confined; and every such certificate for the confinement of any person, in a house licensed under this Act, if the same be not signed by two medical practitioners, shall state the special circumstances, which shall have prevented the patient being visited by two medical practitioners, and any patient may under such special circumstances, be admitted into any such house, upon the certificate of *one!* medical practitioner, provided such certificate shall be further signed by some other medical practitioner, within seven days next after the admission of such patient into any such house as aforesaid: and any person who shall knowingly and with intention to deceive, sign any such medical certificate untruly, setting forth any of the particulars required by this Act, shall be deemed guilty of a misdemeanor."

Such, my Lord, is the statute, to which a supposed lunatic must apply for protection, such the enactment which

constitutes his safeguard from forcible arrest and imprisonment; and thus it is that a mad-house-keeper is shielded by an implication of law, against almost every enormity. The two requisites are always easy of procurement, for where is the obstacle, to parties actuated by interest or malignity, against their obtaining *first*: An *order* signed by one person, interested perhaps, in procuring the confinement. And *secondly*, the certificate of two Physicians, Surgeons, or Apothecaries, who may, or may not, according to circumstances, and the amount of their respective educations, be qualified to exercise so responsible an office. A conscientious practitioner would always examine the state of the patient's mind, with the greatest exactness and care, before he granted his certificate; but the case of *Anderson v. Burrow*, 4 Carr. and p. 210, goes to shew that such has not always been the course adopted; there it was even necessary for a Court of Justice to decide, that a medical man is not warranted merely on statements made by the relations of a person supposed to be insane, in sending men to take him into custody and confine him, unless satisfied from those statements, that such a step is necessary, to prevent some immediate injury from being done by the individual, to himself, or to other persons.

The main difficulty however which presents itself, must still remain, and cannot be affected either by the decision in *Anderson v. Burrow*, or even by the restriction of a statute which renders it incumbent upon the medical practitioner "to visit and personally examine" the patient, for even without such a clause, what practitioner is there who would not go through the mere form of a personal examination, least perchance, he should be called upon thereafter, to identify the individual, of whose insanity he had given a certificate. The fault rests in the tribunal, not in the evidence; the evidence may be sufficient or insufficient, at any rate it is taken; and well does every member

of the faculty know, that having once formally inspected, and having signed the warrant of incarceration, no law can reach him, however unfounded the certificate may be; because, all that is required, is his *opinion* in writing, and insanity being defined by no given rules, nor distinguished by any uniform or infallible test, every thing rests upon *an opinion*, and under that opinion, whether right or wrong, the wise and the ignorant, the honourable and the dishonourable, may shelter themselves with impunity.

The experience of medical men, will not be wanting to assure your Lordship, if doubtful as to the fact, that it is a matter of very common occurrence, for one practitioner to sign the certificate, upon the assertion of another member of his profession, at the same time satisfying the words of the statute, by a mere glance at the unhappy object of it. Others have performed a similar act, as a matter of favour; whilst another M. R. C. S. may be found perchance, who will not hesitate to *sign* the fatal document, and at the same time have cause to say,

“My poverty, but not my will consents.”

The necessity for preserving the public peace, which will at all times justify, the apprehending of those who disturb it, will likewise be a sufficient authority for placing a dangerous lunatic under immediate restraint; but the great proportion of those who are commonly considered *non compos*, never exhibit any symptoms of violence whatever; their disorder can merely be traced to a morbid perversion of the feelings, affections, and active powers, and sometimes co-exists with an apparently unimpaired state of the mental faculties; then wherefore is the reason, why *such* persons should be hurried into confinement without even the ceremonial of a legal enquiry? To pursue the words of an eminent and distinguished writer on 'The Phenomena of Insanity, and other disorders affecting the mind. (Dr.

Prichard) ‘ There are very many individuals living at large and not entirely separated from society, who are affected in a certain degree with this modification of insanity. They are reputed persons of a singular, wayward, and eccentric character. An attentive observer, will often recognize something remarkable in their manners, and habits, which may lead him to entertain doubts, as to their entire sanity; and circumstances are sometimes discovered on inquiry, which add strength to this suspicion. In many instances it has been found that an hereditary tendency to madness has existed in the family, or that several relatives of the person affected have laboured under the diseases of the brain. The individual himself has been discovered to have suffered, in a former period of life, an attack of madness of a decided character. His temper and dispositions are found to have undergone a change; to be not what they were previously to a certain time; he has become an altered man, and the difference has, perhaps, been noted from the period when he sustained some reverse of fortune, which deeply affected him, or the loss of some beloved relative. In other instances, an alteration in the character of the individual has ensued immediately on some severe shock which his bodily constitution has undergone. This has been either a disorder affecting the head, a slight attack of paralysis, a fit of epilepsy, or some febrile or inflammatory disorder, which has produced a perceptible change in the habitual state of the constitution. In some cases the alteration in temper and habits has been gradual and imperceptible, and it seems only to have consisted in an exultation and increase of peculiarities, which were always more or less natural and habitual.’

Does it accord with any principles of reason, of law, or equity, that such individuals as are alluded to by the learned writer,—and who compose by far the greater number of insane persons,—should be treated in the same manner as

the raving madman,—that they should be torn from their associates, and their homes, to be made the inmates of a licensed gaol! there to be goaded with all the horrors of their dreadful situation, and if reason has not quite deserted her citadel, there to be distracted by surrounding objects, and harrassed into wretchedness, until the intellect is altogether dislodged from its seat.

Whatever custom may have done towards sanctioning a law which places on the same footing the inoffensive monomaniac with the phrensied lunatic, common sense must at once rebel against such an arrangement. And, surely, my Lord, an enquiry on your part as to the necessity of rendering every person who is thought to be *non compos* liable to an *immediate* consignment to a mad-house, would not be without some benefit.

Until Insanity is better defined by the English Law than at present it is, Justice requires a more solemn enquiry to be made, and some more constitutional tribunal to decide whether an individual ought to be kept in confinement, and deprived of his liberty, merely because his understanding is partially disturbed, his affections deadened, his attachments warped, or his feelings become changed.

A striking instance has lately occurred which illustrates the position I have taken. It happened in the case of MR. PATERNOSTER, a gentleman of great respectability, and one who had recently occupied a responsible situation under the Honorable East India Company. This gentleman was said to be insane, he was in fact *certificated* as such, and would probably have been incarcerated in a mad-house, without the public attention having been called to the fact; but for his appearance at the Marlborough Street Police Office, for the purpose of lodging a complaint against two men, who, armed with the certificate, had violently attempted to gain possession of his person. If the newspaper report of the proceedings was correct,—

and it is reasonable to suppose that it was so, from the fact of its never having been contradicted,—sanity itself could not have suggested a more touching or rational appeal than was made on that occasion by Mr. Paternoster to the Magistrates; but in the Police Office he found no security for his liberty, no protection for his person, the boon which every Englishman has a right to expect could not be granted to him; and why? because the *order* had been regularly signed, the *certificate* had been regularly filled up, and he was at last dragged away almost frantic by the minions of a mad-house. Let such a case speak for itself, it requires no comment.

Another case, although of a somewhat different description lately appeared in a medical publication of considerable circulation.*

And as the report of it at the time when it occurred, must have filled the mind of every reader, with astonishment and dismay, so does it become a more imperative duty on the part of the legislature, to enquire into a system, which is so constantly capable of abuse, and provide some remedy in its amendment. A labouring man named HOLMES, had been admitted to the Westminster Hospital, with a severe injury in the wrist joint; excessive inflammation and consequent pain were produced—delirium followed—and, somehow or other, a Surgeon of the establishment came to the conclusion, that, the man was mad, and would be a fit inmate for a lunatic asylum. A certificate was signed accordingly; the *Statute* was complied with; and the man against whom this warrant was out, would inevitably at this time have been lodged amongst mad-men, if an intelligent individual connected with the hospital, had not taken the pains to enquire into the case. This gentleman, by prescribing certain medicines, brought the patient into a profound sleep, which

* The Lancet, vol. i. 1838-9. p. 98.

dissipated the delirium, and recovery almost immediately followed !

The instances which I have now adduced are but the examples of many others of a similar description ; there are thousands of other cases, in which the *data* of an accurate judgment are beyond our possession, and where the rashness and errors of medical men, lie concealed in the sufferer's grave. But having, my Lord, thus far occupied your time, by reprobating the law as it exists, I would at the same time take leave, respectfully to submit some suggestions for its amendment. It is a maxim in which there is great truth, 'that it is always more easy to find fault than to cure,' and therefore, it will most become me, to propose such a remedy only, as has been often tried before, and which, by long experience, has been found efficient.

Instead of the power being vested, as it now is, in the hands of any two Physicians, Surgeons, or Apothecaries, I would suggest that no person whomsoever, should be confined in any mad-house, lunatic-hospital, or licensed asylum, until an Inquest of twelve men had first determined upon the fact, whether the individual was sane or not ; it would then become a matter of proof to be supported as well by the evidence of medical men, as also by that of the friends of the unfortunate sufferer, (the latter being frequently, from their connexion, the better judges, whether the subject of enquiry, ought to be under any actual restraint) ; counsel if required, on either side, should be permitted to attend ; and the supposed lunatic, if not in a dangerous state, should always appear before the Inquest ; if, however, it would be imprudent to produce the lunatic from any ill consequence which might attend the violence of the malady, it ought then be compulsory on two medical men, or one medical man and two other persons, to testify such facts upon oath.

This trial by JURY might be very easily carried into effect throughout the country, by constituting as Judge upon

every such enquiry, the Coroner of the County, Division or jurisdiction, within which the lunatic might happen to reside, or to have been taken charge of by the parish officer.—The Coroner to be paid in like manner as he now is, upon other Inquests which he holds.—In the Metropolitan districts where the vast proportion of lunacy cases arise, an officer appointed by your Lordship, might occupy in this respect the place of Coroner upon such occasions, and he should also be invested with the same power as the Coroner now possesses, in compelling the attendance of Jurymen, &c. Upon the record of a verdict of ‘Insanity’ it would then be competent to the Constable, Parish Officer, or a relative, with such a warrant, to take charge of the Lunatic, and place him under keepers, until such a time as his sanity was restored.

The proposed alteration, could not in any respect interfere, with the present system of inspection, neither would it tend to abolish commissions *de lunatico inquirendo*, for such commissions, will always be called into existence, when property is the question involved, and when the particular time of the individual becoming incompetent to manage his own affairs, is the subject for enquiry.

Independently of the protection which this trial by Jury would afford to personal liberty, there is another cogent reason, why it should be carried into effect. It is, that too heavy a responsibility, is at present thrown, upon the medical profession at large; the most conscientious practitioner, as well as the ignorant graduate, who obtains his degree by the mere payment of a fee, is equally liable, to have an action brought against him for causing the arrest and imprisonment of an insane patient, and he is also at all times subject to an indictment for the assault.

The subtle ingenuity of a lunatic, has thus oftentimes exposed honest and honourable practitioners to verdicts, which would have subjected them to damages of a most

serious character; and this danger must have been avoided, if their opinion had been shielded by the verdict of a jury: in short, if the medical attendant had by Law been merely a witness instead of a judge.

A memorable instance is recorded by Lord Erskine in one of his most celebrated speeches at the bar; where all the ingenuity of counsel was nearly foiled in attempting to expose the infirmity of a mad-man who had indicted his own brother and a surgeon for imprisoning him in a mad-house. One whole day was wasted in an attempt to prove the insanity of the Prosecutor; and he, by an affecting history of unmerited sufferings, had made himself appear the victim of a most wanton and barbarous oppression; at last a celebrated Physician (Dr. Sims) gave the proper cue to the Counsel, viz., that the lunatic considered himself "the Saviour of mankind." The learned Counsel then affected to lament the indecency of his ignorance, and the mad-man expressing his forgiveness with the utmost gravity and emphasis, declared himself as The Christ. A verdict of acquittal followed.—Yet here the defendant, was necessarily exposed by this trial, to great anxiety and mental suffering, and would probably have been convicted but for the opportune appearance of Dr. Sims as a witness.

The Medical Profession, as a body, would be the last to complain of this deprivation of their power, seeing how much better protected they would be, in giving an opinion upon the subject of insanity. And, as the evidence taken before the Coroner, would always be committed to writing, and a copy transmitted to the Board of Commissioners in London, a compilation of the several cases investigated in the course of a year, would thus become the most invaluable records to those, who would wish to derive a correct account of the several causes, appearances, and duration of madness. There are many other reasons, although of minor

importance, for placing this branch of the Law on a surer footing, but as their enumeration would exceed the limits of a letter, I will for the present omit them; leaving it, with a just and sure confidence in Your Lordship's humanity and judgment, to determine whether any amendment therein, can or ought to be made.

Upon so important a subject, your Lordship will readily grant an excuse, for troubling you at such considerable length. In the course of professional practice, my attention has lately been called to its consideration; and this perhaps, will also be a sufficient plea, for thus publicly addressing you, under no other Title, than that of,

Your Lordship's Most Humble and Obedient Servant,

A BARRISTER OF THE INNER TEMPLE.

To

The Right Honorable BARON COTTENHAM,

Lord High Chancellor of Great Britian.

&c. &c. &c.